

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ALBERT CHESHIRE, JR.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
GREYHOUND LINES, INC.,	:	
DONELL MERRITT, PARIS DEVON	:	
and FRANK R. SEESE,	:	
Defendants.	:	No. 02-7288

**MEMORANDUM AND ORDER**

**J. M. KELLY, J.**

**MAY , 2003**

Presently before the Court is a Motion to Dismiss filed by Defendants Paris Devon ("Devon") and Frank R. Seese ("Seese") (collectively, the "Defendants") requesting that this Court dismiss Plaintiff Albert Cheshire, Jr.'s ("Cheshire" or "Plaintiff") Complaint against Defendants for lack of personal jurisdiction. Plaintiff has failed to respond to Defendants' motion, despite being duly served. Thus, for the following reasons, this Court **GRANTS** Defendants' Motion to Dismiss as uncontested pursuant to Local Rule 7.1(c).<sup>1</sup>

**I. BACKGROUND**

Cheshire, a Pennsylvania resident, initiated the instant action in this Court for injuries he sustained while riding as a passenger on a bus owned by Defendant Greyhound Lines, Inc.

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<sup>1</sup> Local Rule of Civil Procedure 7.1(c) provides that, in the absence of a timely response, the Court may grant a motion as uncontested. E.D. Pa. R. Civ. P. 7.1(c).

("Greyhound"), a Texas corporation, and operated by Defendant Donnell Merritt, an Ohio resident. (Compl. at ¶¶ 1-3, 6.)

Cheshire alleges that, on or about October 1, 2000, he was thrown from his seat when the negligently operated Greyhound bus he was riding on collided with a second motor vehicle that was also negligently operated. (Compl. at ¶¶ 6-7.) Cheshire alleges that the second motor vehicle is owned by, and was in the possession and control of, Devon, an Ohio resident, when it collided with the Greyhound bus. (Compl. at ¶ 20.) Cheshire also alleges, in the alternative, that the second motor vehicle, was owned by, and was in the possession and control of, Seese, at the time of the accident. (Compl. at ¶ 23.)

Cheshire's Complaint contains no other jurisdictional averments pertaining to Defendants, and Defendants now move this court for dismissal for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2).

## **II. STANDARD OF REVIEW**

Federal Rule of Civil Procedure 12 provides that a matter may be dismissed for a court's lack of personal jurisdiction over a litigant. Fed. R. Civ. P. 12(b)(2). A federal district court may assert personal jurisdiction over a nonresident of the state in which the court sits, to the extent authorized by the law of that state. Fed. R. Civ. P. 4(e). See Dunnigan v. Silverthorn,

542 F. Supp. 32, 33 (E.D. Pa. 1982). The Pennsylvania Long-Arm Statute provides in relevant part, that "the jurisdiction of the tribunals of this Commonwealth shall extend . . . to the fullest extent allowed under the Constitution of the United States and may be based on the most minimum contact with this Commonwealth allowed under the Constitution of the United States." 42 Pa. Cons. Stat. Ann., § 5322(b). The Due Process Clause of the Fourteenth Amendment of the United States Constitution permits a court to exercise personal jurisdiction over a nonresident defendant provided he has "certain minimum contacts with [the forum] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) (quoting Milliken v. Meyer, 311 U.S. 457, 463 (1940)). The nature of these contacts must be such that the defendant should be reasonably able to anticipate being haled into court in the forum state. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).

When a defendant raises a personal jurisdiction defense, the burden rests with the plaintiff to establish with "reasonable particularity" sufficient contacts between the defendant and the forum state to support jurisdiction. Provident Nat. Bank v. Cal. Fed. Sav. & Loan Ass'n, 819 F.2d 434, 437 (3d Cir. 1987). To meet this burden, the plaintiff must establish either that the

particular cause of action arose from the defendant's activities within the forum state - specific jurisdiction - or that the defendant has "continuous and systematic" contacts with the forum state - general jurisdiction. Id. (citing Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 414 (1984)).

Prior to trial, a plaintiff need only make a prima facie showing of jurisdiction. Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino, 960 F. 2d 1217, 1223 (3d Cir. 1992). A plaintiff's jurisdictional allegations will be taken as true and factual disputes are resolved in the plaintiff's favor. Aircraft Guaranty Corporation v. Strato-Lift, Inc., 974 F. Supp. 468, 471 (E.D. Pa. 1997).

### **III. DISCUSSION**

Defendants contend that this Court cannot exercise personal jurisdiction over them since Plaintiff fails to allege that Defendants have any connections with Pennsylvania, the forum state, and the motor vehicle accident giving rise to Plaintiff's instant suit occurred in Ohio. Thus, Defendants argue that they have insufficient contacts with Pennsylvania to satisfy the minimum requirements of due process necessary for this Court to exercise personal jurisdiction over them. We agree.

Even taking Plaintiff's averments as true, as this Court is required to do pursuant to Rule 12(b)(2), Plaintiff's Complaint

only avers that Defendants reside in Ohio and that the motor vehicle accident, from which Plaintiff sustained his injuries, occurred in Ohio. (See Compl. at ¶¶ 3-4, 6-7.) As stated above, when a defendant raises a personal jurisdiction defense, the plaintiff has the burden to establish with "reasonable particularity" sufficient contacts between the defendant and the forum state to support jurisdiction. See Provident Nat. Bank, 819 F.2d at 437. In this case, Plaintiff, by failing to respond to Defendants' motion, does not provide this Court with any additional information to warrant our exercise of personal jurisdiction over Defendants, and, thus, fails to meet his burden to establish that either specific or general personal jurisdiction exists. Since Plaintiff has not demonstrated a basis for personal jurisdiction, this Court dismisses Plaintiff's Complaint as to Defendants Devon and Seese.

#### IV. CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss for lack of personal jurisdiction pursuant to Federal Rule of Civil Procedure 12(b)(2), to which no response has been filed, is **GRANTED.**

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DONELL MERRITT, PARIS DEVON	:	
and FRANK R. SEESE,	:	
Defendants.	:	No. 02-7288

O R D E R

AND NOW, this                      day of May, 2003, in consideration of the Motion to Dismiss filed by Defendants Paris Devon and Frank R. Seese (collectively, the "Defendants") (Doc. No. 8), to which no response has been filed, it is **ORDERED** that Defendants' Motion to Dismiss is **GRANTED** pursuant to Local Rule of Civil Procedure 7.1(c).

BY THE COURT:

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JAMES MCGIRR KELLY, J.